

**Senate Bill No. 1124**

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Passed the Senate     July 15, 1999

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*Secretary of the Senate*

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Passed the Assembly     July 8, 1999

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 1999, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to add Section 1633 to the Civil Code, relating to contracts, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1124, Vasconcellos. Brokerage contracts.

Existing law generally describes the requirements for entering into a valid contract.

This bill would provide that an application by a prospective customer to enter into a brokerage agreement with a broker-dealer, as defined, shall be deemed to be a valid contract if the application is transmitted by the customer to the broker-dealer electronically, is accompanied by the prospective customer's electronic or digital signature, and is accepted by the broker-dealer.

This bill would also require an application that is transmitted electronically to comply with all applicable federal and state securities laws and regulations relating to disclosures to prospective customers, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1633 is added to the Civil Code, to read:

1633. (a) Notwithstanding any other provision of law, an application by a prospective customer to enter into a brokerage agreement with a broker-dealer, which application is transmitted electronically and is accompanied by the prospective customer's electronic signature or digital signature as described in subdivisions (d), (e), (f), and (g), shall be deemed, upon acceptance by the broker-dealer, to be a fully executed, valid, enforceable, and irrevocable written contract, unless



grounds exist which would render any other contract invalid, unenforceable, or revocable.

(b) Nothing in this section abrogates or limits any existing law that would otherwise apply to contracts governed by this section, or any theory of liability or any remedy otherwise available at law.

(c) “Broker-dealer,” for purposes of this section, means any broker-dealer licensed pursuant to Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code or exempted from licensing pursuant thereto.

(d) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) “Electronic record” means a record created, generated, sent, communicated, received, or stored electronically.

(f) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(g) “Digital signature,” for the purposes of this section, means an electronic identifier, created by a computer, that is intended by the party using it to have the same force and effect as the use of a manual signature. The use of a digital signature shall have the same force or effect as a manual signature if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in a manner that if the data is changed, the digital signature is invalidated.

(h) The use of an electronic signature or digital signature shall have the same force or effect as a manual signature.

(i) The application that is transmitted electronically pursuant to subdivision (a) shall comply with all applicable federal and state securities laws and regulations relating to disclosures to prospective



customers. Unless those laws and regulations currently require disclosures to be displayed or printed in bold, to be of specific type or print size, and to be placed prominently at specified locations within the application, the disclosures shall be displayed prominently and printed in capital letters, in bold type and displayed or printed immediately above the signature line. Disclosures shall be written in plain English. The full text of the disclosures shall be contained in the application as required by this subdivision.

(j) Whenever a disclosure to a prospective customer is required under federal or state law or regulation to be confirmed as having been made, the application that is transmitted electronically pursuant to subdivision (a) shall provide a means by which the prospective customer shall confirm that he or she has read the disclosure.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the validity of the increasing number of brokerage agreements entered into through electronic commerce as soon as possible, it is necessary that this act take effect immediately.



Approved \_\_\_\_\_, 1999

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*Governor*

